



# MAINE REAL ESTATE NEWS

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*from the director's desk*  
*carol j leighton*

## New Core Course "Offers & Counter Offers"

**New course mandatory for all licenses expiring,  
renewed or activated on or after March 1, 2004**

The Real Estate Commission has approved a new continuing education core course titled "Offers & Counter Offers". The 3-hour core continuing education course will be generally available sometime this fall. As with all other core courses, licensees renewing or activating a license before March 1, 2004, may choose to complete the "Offers & Counter Offers" core course or the current core course "Fair Housing & Diversity". Licensees with a license expiration date of March 1, 2004 or after and licensees activating a license on or after March 1, 2004 will be required to complete the "Offers & Counter Offers" core course.

In March 2003 the Real Estate Commission issued "Offers & Counter Offers – Agent/Client Guidelines". The guidelines are available on the Commission's website at [www.state.me.us/pfr/olr/categories/cat38.htm](http://www.state.me.us/pfr/olr/categories/cat38.htm), or you may contact the Commission's offices to request a hard copy. The new core course provides important information for licensees regarding the guiding principles. At the completion of the "Offers & Counter Offers" core course, the student will be able to:

- Discuss the Guiding Principles
- Describe the role of the listing agent and buyer agent
- Explain options available when offers are made or received and the possible outcomes
- Determine when a licensee is allowed to disclose the existence of offers
- Explain the communication process between listing licensee and selling licensee during an offer/counter offer/multiple offer situation
- Differentiate between fiduciary duties to clients and required disclosures to third parties
- Demonstrate and apply through case studies an understanding of the offer guidelines

The Real Estate Commission's decision to issue the Guidelines and adopt the new core course is in response to consumer calls and complaints alleging that the licensee acted improperly in preparing or presenting an offer. The Guidelines and new core course are intended to address these issues by providing information to buyers and sellers regarding how offers, counter offers and multiple offers are handled. This information is intended to clarify some of the misconceptions and to assist licensees in their discussion with clients regarding these issues.

## Department of Human Services Wastewater & Plumbing Control Program - Voluntary Onsite Sewage Disposal System Inspection

### WHAT IS A SYSTEM INSPECTION?

The Department of Human Services has established minimum criteria for evaluating and reporting on existing subsurface wastewater disposal systems. This voluntary program is being promoted as an important component of the real estate transaction process. The report criteria are not intended to provide a comprehensive evaluation of the various system components, or as an analysis of site characteristics that are best evaluated by licensed site evaluators, but will provide the following important information:

1. Approximate age of the disposal system;
2. Verification that a design plan and plumbing permit exists or doesn't exist;
3. A general description of the system components and their present condition;
4. A list of differences (if any) identified between the design plan and actual installation; and
5. Identification of any malfunctions or surface discharges needing correction under the current rules.

The inspection is completed by an individual who has attended a voluntary certification program established by the Maine Department of Human Services in cooperation with the Maine Department of Environmental Protection. The process includes a search of property owner, municipal, and state records and a visit to the property. The inspection report may include additional information beyond the minimum requirements and is the property of the inspector and the client. Copies are not provided to the municipality or the state by the inspector.

Information on the Department's voluntary certification program and a list of the over 300 Certified System Inspectors is available online at the following web address:

[http://www.maine.gov/dhs/eng/plumb/system\\_inspections.htm](http://www.maine.gov/dhs/eng/plumb/system_inspections.htm)

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## New Legislation Bans the Sale of Arsenic-treated Wood

### The Legislation Requires the Real Estate Commission and Other State Agencies to Report Back to the Legislature on Arsenic in Private Water Supplies and Arsenic-treated Wood

LD 1309 (PL 459) "An Act to Protect Public Health by Reducing the Human Exposure to Arsenic" enacted by the 121<sup>st</sup> Legislature includes the following:

- Bans the sale of arsenic-treated wood beginning on April 1, 2004;
- Requires private home sellers to provide to buyers information developed by the Bureau of Health regarding what homeowners should know about arsenic in private water supplies beginning on January 1, 2004;
- Requires the Department of Environmental Protection to submit a plan by January 1, 2005 to the Legislature for the safe management of arsenic-treated wood waste;
- Requires the Bureau of Health to submit a report no later than October 1, 2004 to the Legislature regarding the need for a comprehensive safe drinking water program for private wells to address arsenic and other contaminants;
- Requires the Department of Environmental Protection to submit a report no later than January 1, 2004 to the Legislature that contains a market evaluation of the sale of arsenic-treated wood; and,
- **Requires the Real Estate Commission** to submit a report no later than October 1, 2004 to the Legislature describing the efforts within the real estate industry to increase awareness among real estate licensees and buyers and sellers of residential real estate of the hazards of arsenic in private water supplies and the need to identify and regularly coat with a sealant arsenic-treated wood structures. The efforts may include information directly used by home sellers and buyers, such as modifications to purchase and sales agreements, modifications to hazardous materials disclosures and educational brochures or other written information.

In response to the issues raised by LD 1309 the Commission has added a link on its home page (<http://www.state.me.us/pfr/olr/categories/cat38.htm>) to the Bureau of Health's home page ([www.state.me.us/dhs/etp/txtpubs.htm](http://www.state.me.us/dhs/etp/txtpubs.htm)). The link is to the Bureau's Environmental Toxicology Program's list of drinking water publications. Licensees are encouraged to download the publications for distribution to sellers and buyers of property serviced by a private water supply. Information regarding arsenic-treated wood structures is available at the following web site: [http://www.epa.gov/pesticides/factsheets/chemicals/cca\\_transition.htm](http://www.epa.gov/pesticides/factsheets/chemicals/cca_transition.htm)

The Bureau advises that all private water supplies should be tested for arsenic and not just at the point of sale. However, since water tests are most often performed as part of a real estate transaction the Bureau is encouraging the parties to include arsenic in the testing.

#### WHY YOU SHOULD TEST WELL WATER FOR ARSENIC

- 1) LONG-TERM drinking of water with high levels of arsenic has been found to cause cancer;
- 2) FOR EVERY 100 Maine private household wells, between 2 and 10 may have arsenic levels higher than the current federal drinking standard.
- 3) FOR EVERY 100 Maine private household wells, between 10 and 30 may have arsenic levels higher than the current World Health Organization guideline.
- 4) TESTING well water for arsenic is easy and does not cost a lot of money, a water test for just arsenic costs \$12 to \$15. You can order a test kit from the Maine State Health and Environmental Testing Laboratory at 287-2727 or check your yellow pages for a state certified private laboratory.

#### IF YOUR WATER TESTS HIGH FOR ARSENIC

- 1) REDUCE how much arsenic gets into your body by using bottled water for drinking and preparing beverages. This is a good short-term solution.
- 2) TREATMENT systems to remove arsenic from well water are available. Consult a water treatment specialist.

## ATTENTION LICENSEES!

Be sure to use the most recent versions of the Commission's forms and applications. They may be downloaded from our website at [www.maineprofessionalreg.org](http://www.maineprofessionalreg.org). Click on "View List of Licensed Professions", choose Real Estate Brokers then scroll down the page and click on "Applications, Forms & Publications".

**Attention Licensees!** Forms and applications may be downloaded from [www.state.me.us/pfr/olr/categories/cat38.htm](http://www.state.me.us/pfr/olr/categories/cat38.htm)

## Frequently Asked Questions

### **Q. How long should I give the Commission to return my phone call?**

A. Please allow up to 24 hours for a response. Calls are generally returned the same day they are received, however, for a variety of reasons, the staff person you have called may not be able to return your call the same day. When you reach a staff member, please remember to contact the same individual until the problem is resolved. Phone calls placed to numerous staff members usually delays your response, results in confusion for you and causes the staff to duplicate efforts.

### **Q. On what date will my application become effective?**

A. For all but new license applicants, if you have completed the application properly, enclosed any required attachments and paid the correct fee, you are generally considered licensed and able to work on the day the Commission receives your completed application. New individual license applications take a little longer due to the background check requirement and it could be up to four days after we receive the application before the license is approved and issued. In any event, you may always check the status of your license online at [www.maineprofessionalreg.org](http://www.maineprofessionalreg.org) by clicking on "Find a Licensee".

### **Q. Should I wait to receive my renewal application before renewing my license?**

A. Yes. Your renewal application includes questions regarding completion of the requisite continuing education hours and whether you have been convicted of any crimes over the previous licensing term. These questions must be completed by you in order to renew your license. However, if your license renewal date is approaching and you haven't received your application, it is your responsibility to contact the Commission for a replacement or renew your license online at [www.maineprofessionalreg.org](http://www.maineprofessionalreg.org) by clicking **RENEW NOW**.

### **Q. Where can I get the most recent applications and forms?**

A. You may download all the Commission's forms and applications from our website at [www.maineprofessionalreg.org](http://www.maineprofessionalreg.org). Click on the button titled "View List of Licensed Professions" and choose Real Estate Brokers. Scroll down the Commission's homepage and click on "Applications, Forms and Publications". All our applications and forms are available for printing as well as schedules for upcoming continuing education and prelicensing courses.

### **Q. I understand the Commission doesn't keep a record of my continuing education any longer. Who can I contact to find out if I have completed the required number of hours for renewal of my license?**

A. The Commission expects licensees to keep track of the education hours they have completed for renewal and retain certificates of completion in their own files. If for any reason you do not have some or all of your certificates, you can contact the course sponsor to request duplicate copies. However, this means you must rely on memory to determine who you took the course from. The best course of action is to be sure you get a certificate each time you complete a course and keep all certificates in a spot you will remember when it comes time to tally up your hours for renewal.

### **Q. I am a Sales Agent and, for financial reasons, need to work fulltime in another job. I've been advised to place my license inactive but have heard that might not be a good idea. Can I place my license inactive with no adverse consequences?**

A. The Commission recommends that Sales Agents **do not** place the license inactive. One of the requirements to upgrade to the Associate Broker level is that the Sales Agent license must be held on active status for the full two-year term of the license. Inactive status does not extend the term of the license but **does** interrupt your active standing, which may mean that you will be unable to satisfy the two-year active licensing requirement.

### **Q. I submitted my Associate Broker license application to the Commission 3 weeks ago. My Sales Agent license expires tomorrow and I haven't received my new license. Is there a problem?**

A. You must fulfill the two-year active Sales Agent licensing requirement before the Commission can issue your new Associate Broker license. Therefore, the Commission must wait until the day after your Sales Agent license expires to actually process your license application. If your application is complete when received in our office, your new Associate Broker license will take effect immediately upon the expiration of your Sales Agent license with no break in licensing. However, it may take 5 to 10 days after processing for your new license and pocket card to arrive at the agency.

### **Q. I hear there is a new core course to take the place of Fair Housing & Diversity. My license expires on February 18, 2004. Which course do I have to take for my license renewal?**

A. If you renew your license before March 1, 2004, you may take either "Fair Housing & Diversity" OR the new course "Offers & Counter Offers" to satisfy the core requirement. However, you **MUST** take "Offers & Counter Offers" if you renew your license on or after March 1.

### **Q. My license expires in April 2004. If I renew it before March 1, can I use Fair Housing & Diversity for the core requirement?**

A. No. Licensees whose license will expire on or after March 1, 2004 **MUST** complete "Offers & Counter Offers". This requirement applies even if you submit your renewal application before March 1.



## CURRENT CASES

### Karen L. Bivins, Deputy Director

On September 26, 2002 the members of the Commission ratified their decision reached after a hearing on August 22, 2002 involving Linwood E. Bibber of Hallowell, Maine. Bibber is a broker who failed to complete 15 hours of continuing education prior to the expiration of his license.

As part of his license renewal application, Bibber certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Bibber completed only 9 hours of education prior to his license expiration date.

Bibber was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D), and (F). His license was ordered suspended for a period of 30 days. He was ordered to pay a fine of \$1,500.00; to submit evidence of completion of 6 clock hours of education including the core course; and to submit documentation of his completion of 15 hours of approved continuing education with his next renewal.



On September 26, 2002 the members of the Commission ratified their decision reached after a hearing on August 22, 2002 involving Danna W. Chase of York, Maine. Chase is an associate broker who failed to complete 15 hours of continuing education prior to the expiration of her license.

As part of her license renewal application, Chase certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Chase completed all 15 hours of education after her license expiration date, and completed 3 of the courses after receiving the notice of audit.

Chase was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D), and (F). Her license was ordered suspended for a period of 30 days. She was ordered to pay a fine of \$1,500.00 and to submit documentation of her completion of 15 hours of approved continuing education with her next renewal.



On September 26, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Ellis Cohn of Camden, Maine. Cohn is a designated broker who failed to complete 15

hours of continuing education prior to the expiration of his license.

As part of his license renewal application, Cohn certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Cohn completed only 13 hours of education prior to his license expiration date.

Cohn was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D), and (F). He agreed to pay a fine of \$900.00; to submit documentation of completion of 2 clock hours of education; and to submit documentation of his completion of 15 hours of approved continuing education with his next renewal.



On September 26, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Barbara J. Dupuis of Auburn, Maine. Dupuis is a broker who failed to complete 15 hours of continuing education prior to the expiration of her license.

As part of her license renewal application, Dupuis certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Dupuis completed only 9 hours of education prior to her license expiration date.

Dupuis was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D), and (F). She agreed to pay a fine of \$1,000.00; to submit documentation of completion of 6 clock hours of education; and to submit documentation of her completion of 15 hours of approved continuing education with her next renewal.



On September 26, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Harry S. Jones III of Ellsworth, Maine. Jones is a designated broker who failed to complete 15 hours of continuing education prior to the expiration of his license.

As part of his license renewal application, Jones certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Jones completed only 11 hours of education prior to his license expiration date.

Jones was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D), and (F). He agreed to pay a fine of \$1,200.00; to submit documentation of completion of 4 clock hours of education; and to submit documentation of his completion of

15 hours of approved continuing education with his next renewal.



On September 26, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Marsha Steinglass of Rockland, Maine. Steinglass is a designated broker who failed to complete 15 hours of continuing education prior to the expiration of her license.

As part of her license renewal application, Steinglass certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Steinglass had not completed the core course prior to her license expiration date.

Steinglass was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D), and (F). She agreed to pay a fine of \$500.00; to submit documentation of completion of the core course; and to submit documentation of her completion of 15 hours of approved continuing education with her next renewal.



On September 26, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Steven D. Weigel of Moody Beach, Maine. Weigel is an associate broker who failed to complete 15 hours of continuing education prior to the expiration of his license.

As part of his license renewal application, Weigel certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Weigel completed 6 hours of education after his license expiration date.

Weigel was found in violation of 32 M.R.S.A. §§ 13067(1)(A). He agreed to pay a fine of \$500.00 and to submit documentation of his completion of 15 hours of approved continuing education with his next renewal.



On September 26, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Steven D. Westra of North Yarmouth, Maine. Westra is a designated broker who failed to complete 15 hours of continuing education prior to the expiration of his license.

As part of his license renewal applica-

tion, Westra certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Westra completed no hours of education prior to his license expiration date.

Westra was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D), and (F). He agreed to immediate revocation of his license.



On October 24, 2002 the members of the Commission ratified their decision reached after a hearing on September 26, 2002 involving David M. Diplock of Augusta, Maine. Diplock was a sales agent who failed to disclose criminal convictions. Diplock stated on his sales agent license application that he had not been convicted of a crime by any court. After the license was issued, the Director learned that Diplock had been convicted in 1982 of disorderly conduct and in 1985 of criminal trespass.

Diplock was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191. His sales agent license was revoked and he was ordered to pay a fine of \$200.00.



On October 24, 2002 the members of the Commission ratified their decision reached after a hearing on September 26, 2002 involving Bettysue Higgins of Gardiner, Maine. Higgins is an associate broker who failed to provide requested documents to the Director.

On July 17, 2001 the Commission sent to Higgins a copy of a complaint with a request for a response. Nothing was received from Higgins. On April 18, 2002 a second request was sent to Higgins. Nothing was received from Higgins. On May 15, 2002 a third request was sent to Higgins by certified mail with a request that the response to the complaint be submitted by May 24, 2002. The certified mail was returned to the Commission marked unclaimed.

Higgins was found in violation of 32 M.R.S.A. § 13067(1)(L). Her associate broker license was suspended until such time as she provides the requested response.



On October 24, 2002 the members of the Commission ratified their decision reached after a hearing on September 26, 2002 involving Thomas C. Smith of Bridgton, Maine. Smith was an associate broker who failed to disclose a criminal conviction.

In 1995 Smith submitted a sales agent license application, on which he stated that he had not been convicted of a crime. His

sales agent license was issued in August 1995. In 1998 Smith submitted an associate broker license application, on which he stated that he had not been convicted of a crime. His associate broker license was issued in October 1998. In 2002 Smith submitted a broker license application. In the application he stated that he had been convicted of a crime in the early 1980's. In a statement submitted to the Director, Smith stated "I did not make this disclosure earlier as I was afraid it would affect my ability to get a real estate license."

Smith was found in violation of 32 M.R.S.A. §§ 13067(1)(A) and (D). His associate broker license was revoked and he was ordered to pay a fine of \$2,000.00.



On October 24, 2002 the members of the Commission ratified their decision reached after a hearing on September 26, 2002 involving Edward M. Snook of Auburn, Maine. Snook is an associate broker who failed to complete 15 hours of approved continuing education prior to the expiration of his license.

As part of his license renewal application, Snook certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Snook completed only 11 hours of continuing education prior to his license expiration date.

Snook was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D), and (F). He was ordered to pay a fine of \$500.00.



On October 24, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Barbara A. Lewis of Windham, Maine. Lewis is a designated broker who failed to enforce her written agency policy.

Lewis had an agency policy that allowed appointed agency and disclosed dual agency. Part of the policy stated that licensees who work closely together would be appointed agents of each other's clients, and that both licensees would be identified on the written appointed agent agreement given to clients. One of the examples given of licensees who work closely together was husband and wife.

Lewis listed property for sale and completed an appointed agent form. The seller of the property was her mother. Lewis's husband was also licensed with the agency, but she did not identify him on the ap-

pointed agent agreement form as a licensee appointed to represent the seller.

Lewis's husband showed the property to potential buyers who decided they were interested. They decided to list their current property with Lewis's husband, and to have him represent them in the purchase of his mother-in-law's property. He did not complete an appointed agent agreement form for the buyers, although he did complete a disclosed dual agency consent agreement. In the purchase and sale agreement that was entered into, Lewis was identified as representing the seller and her husband was identified as representing the buyer.

An earnest money deposit for the transaction was included in the agreement. Lewis did not deposit the money into the agency trust account, stating that the buyers and the seller agreed that the money did not need to be deposited. No written agreement to that effect was prepared.

Subsequently the sale did not go through and the buyers' request to be released from their listing agreement was granted.

Lewis was found in violation of 32 M.R.S.A. §§ 13067(1)(F), (H), and (I)(1), and Chapter 320 Section 3(C) of the Maine Real Estate Commission Rules. She agreed to pay a fine of \$1,000.00 and to establish a standard of practice for agency affiliates consistent with her written agency policy.



On October 24, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Dorothy C. Ramos of Jonesport, Maine. Ramos is a designated broker who failed to notify the Commission of a conviction within 10 days.

Ramos renewed her designated broker license on September 10, 2002. As part of the renewal application, she disclosed that she had been conviction of a Class E crime of theft by unauthorized taking on March 2, 2000. Ramos had not notified the Commission of the conviction prior to her license renewal application in 2002.

Ramos was found in violation of 32 M.R.S.A. §§ 13067(1)(A) and (D), and 13195. She agreed to pay a fine of \$800.00.



On October 24, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Linda M. Valentino of Saco, Maine. Valentino is a designated broker who failed to complete 15 hours of approved continuing education

prior to the expiration of her license.

As part of her license renewal application, Valentino certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Valentino completed only the core course prior to her license expiration date. Other courses Valentino had completed were not approved by the Commission for continuing education purposes.

Valentino agreed that her conduct could constitute a violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). She agreed to pay a fine of \$500.00 and to submit documentation of completion of 15 hours of approved continuing education with her next license renewal application.



On November 14, 2002 the members of the Commission ratified their decision reached after a hearing on October 24, 2002 involving Evelyn M. Noyes of Byfield, Massachusetts. Noyes is a designated broker who failed to complete 15 hours of approved continuing education prior to the expiration of her license.

As part of her license renewal application, Noyes certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Noyes completed only 12 hours of continuing education prior to her license expiration date.

Noyes was found in violation of 32 M.R.S.A. §§ 13067(1)(D) and (F). She was ordered to pay a fine of \$800.00, and to submit documentation of completion of 15 hours of approved continuing education with her next license renewal application.



On November 14, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Stephen D. Besseau of Springvale, Maine. Besseau is a designated broker who failed to notify the Commission of a conviction within 10 days. On October 29, 2002 the Director received information from Besseau disclosing a June 6, 2002 criminal conviction for operating under the influence.

Besseau was found in violation of 32 M.R.S.A. § 13195 and agreed to pay a fine of \$200.00.



On November 14, 2002 the members of the Commission accepted a consent agreement

entered into by the Director and Todd M. Boulet of Auburn, Maine. Boulet is an associate broker who failed to notify the Commission of a conviction within 10 days.

Boulet was originally licensed as a sales agent in July 2000. On July 31, 2002 he submitted an associate broker license application. In the application Boulet disclosed a January 2002 conviction for driving to endanger, which he described as a motor vehicle violation. Driving to endanger is a Class E crime. The Commission subsequently received information from the State Bureau of Identification that Boulet had been convicted in January 2002 of a Class D crime of obstructing government administration.

Boulet was found in violation of 32 M.R.S.A. §§ 13067(1)(D) and 13195. He agreed to pay a fine of \$700.00.



On November 14, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Cheryl L. Oviedo of Windham, Maine. Oviedo is an associate broker who failed to complete 15 hours of approved continuing education prior to the expiration of her license.

As part of her license renewal application, Oviedo certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Oviedo had not completed the core course prior to her license expiration date.

Oviedo was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D) and (F). She agreed to pay a fine of \$500.00, to submit documentation of her completion of the core course, and to submit documentation of completion of 15 hours of approved continuing education with her next license renewal application.



On November 14, 2002 the members of the Commission accepted a consent agreement entered into by the Director and Kevin P. Robertson of Thomaston, Maine. Robertson is a broker who failed to complete 15 hours of approved continuing education prior to the expiration of his license.

As part of his license renewal application, Robertson certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Robertson had completed all 15 hours after his license expiration

date. Although he attempted to contact the course provider to submit the courses on his license expiration date, he was unsuccessful and as a result did not complete the courses until 3 days later.

Robertson was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). He agreed to pay a fine of \$500.00, and to submit documentation of completion of 15 hours of approved continuing education with his next license renewal application.



On January 23, 2003 the members of the Commission ratified their decision reached after a hearing on November 14, 2002 involving Jerold B. Larson of Hingham, Massachusetts. Larson is a designated broker who failed to complete 15 hours of approved continuing education prior to the expiration of his license.

As part of his license renewal application, Larson certified that he had completed 15 hours of approved continuing education. After being selected for an audit, it was discovered that Larson completed 12 hours of education that had been approved in Massachusetts but not in Maine.

Larson was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D), and (F). He was ordered to pay a fine of \$500.00 and to submit documentation of completion of 15 hours of approved continuing education with his next license renewal application.



On January 23, 2003 the members of the Commission ratified their decision reached after a hearing on November 14, 2002 involving Christopher E. Lavoie of Falmouth, Maine. Lavoie is a sales agent who failed to disclose a criminal conviction.

Lavoie stated on his sales agent license application that he had not been convicted of a crime by any court. After the license was issued, the Director learned that Lavoie had been convicted in January 2002 of criminal trespass.

Lavoie was found in violation of 32 M.R.S.A. §§ 13067(1)(D) and 13191(1). He was ordered to pay a fine of \$500.00.



On January 23, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Mark E. Andrews of Yarmouth, Maine. Andrews is a sales agent who failed to disclose a criminal conviction.

Andrews stated on his sales agent li-



cense application that he had not been convicted of a crime by any court. After the license was issued, the Director learned that Andrews had been convicted in 1992 of assault. When contacted by the Director, Andrews denied having been convicted of any crime. Subsequently, Andrews admitted to the Director that the 1992 conviction was his.

Andrews was found in violation of 32 M.R.S.A. § 13067(1)(A). He agreed to the immediate revocation of his license.



On January 23, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Terry L. Berry of Hallowell, Maine. Berry is a designated broker who released a disputed earnest money deposit without giving the parties the proper notification of his good faith decision.

A buyer and seller entered into a purchase and sale agreement which included an earnest money deposit of \$50.00. Berry held the deposit in his agency trust account. The sale did not close and the parties each claimed the deposit. After leaving a telephone message with the seller and not getting a return call, Berry released the deposit to the buyer. He did not have written releases from the parties and did not give written notice to the parties of his good faith decision to release the deposit.

Berry was found in violation of 32 M.R.S.A. § 13067(1)(F) and Chapter 320 Section 3(I)(3) of the Maine Real Estate Commission Rules. He agreed to pay a fine of \$200.00.



On January 23, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Paul T. Emery of South Portland, Maine. Emery is an associate broker who did not notify the Commission in a timely manner of a conviction.

Emery was convicted on September 6, 2002 of a protective order from harassment violation. He did not notify the Commission of the conviction until November 12, 2002.

Emery was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.



On January 23, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Katherine

M. Gerry of Sanford, Maine. Gerry is an associate broker who failed to complete 15 hours of approved continuing education prior to the expiration of her license.

As part of her license renewal application, Gerry certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Gerry completed the core course after the renewal of her license and after receiving the notice of audit.

Gerry was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D) and (F). She agreed to pay a fine of \$600.00 and to submit documentation of completion of 15 hours of approved continuing education with her next license renewal application.



On January 23, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Donald F. Giancola of Portland, Maine. Giancola is a designated broker who failed to respond to a Commission inquiry.

Giancola renewed his license on July 19, 2002. On August 8, 2002 he was sent a notice that he had been selected for an audit of his continuing education credits. No response was received from him.

On September 9, 2002 Giancola was sent a second notice of audit. No response was received from him. On September 26, 2002 Giancola was sent a proposed consent agreement. On October 9, 2002 the Commission received from Giancola the second audit notice along with his education certificates.

Giancola was found in violation of 32 M.R.S.A. § 13067(1)(L). He agreed to pay a fine of \$200.00.



On January 23, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Melissa J. Kluge-Kenison of Naples, Maine. Kluge-Kenison is a sales agent who failed to disclose a criminal conviction.

Kluge-Kenison stated on her sales agent license application that she had been convicted of operating under the influence. After the license was issued, the Director learned that Kluge-Kenison had been convicted in 1987 of theft by unauthorized taking. After being contacted by the Director, Kluge-Kenison stated that she had forgotten about the conviction until asked about it by the Director.

Kluge-Kenison was found in violation of

32 M.R.S.A. §§ 13067(1)(F) and 13191(1). She agreed to pay a fine of \$200.00.



On January 23, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Philip E. McPhail I of Lincoln, Maine. McPhail is a designated broker whose company affiliates did not act in compliance with the agency policy.

McPhail had a written agency policy that allowed appointed agency but specifically did not allow disclosed dual agency. However, it was a practice of the company affiliates to present a disclosed dual agency consent agreement to buyers and sellers at the time of entering into a brokerage agreement, even though the document referred to and provided for consent to a practice not allowed within the company.

McPhail was found in violation of 32 M.R.S.A. § 13067(1)(H). He agreed to pay a fine of \$500.00, to amend his written agency policy to accurately reflect the practice of the company, and to stop requiring disclosure to clients of limitations of services that do not comply with the types of brokerage representation offered by the company.



On January 23, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Jan P. Semba of Bangor, Maine. Semba is a designated broker who failed to complete 15 hours of approved continuing education prior to the expiration of his license.

As part of his license renewal application, Semba certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Semba completed all 15 hours after expiration of his license and after received the notice of audit.

Semba was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (D) and (F). He agreed to pay a fine of \$1,500.00, to a three month suspension of his license, and to submit documentation of completion of 15 hours of approved continuing education with his next license renewal application.



On January 23, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Matthew W. Trudel of Gray, Maine. Trudel is an associate broker who did not notify the Commission in a timely manner of a conviction.

Trudel was originally licensed in January 2001. On his license application he disclosed convictions in 1996 of operating under the influence and criminal mischief. In August 2002 the Director received anonymously copies of court records for Trudel. In December 2002 the Director received a criminal record history from the State Bureau of Identification showing two convictions in July 2002 for habitual motor vehicle offender and operating under the influence. After being contacted by the Director, Trudel provided additional information about the convictions.

Trudel was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$300.00.



On January 23, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Angela I. White of Lewiston, Maine. White is a designated broker who released a disputed earnest money deposit without giving the parties the proper notification of her good faith decision.

A buyer and seller entered into a purchase and sale agreement which included an earnest money deposit of \$1,000.00. White held the deposit in her agency trust account. The sale did not close and the parties each claimed the deposit. The seller signed a written release stating that the deposit would be paid to her. The buyer did not agree and did not sign the release. White determined that the buyer was entitled to the return of the deposit and released it to him without giving written notice to the parties of her good faith decision to release the deposit.

White was found in violation of 32 M.R.S.A. § 13067(1)(F) and Chapter 320 Section 3(I) of the Maine Real Estate Commission Rules. She agreed to pay \$1,000.00 to the seller.



On February 20, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Jon F. Dawson of Bangor, Maine. Dawson is a designated broker who failed to properly appoint himself to represent buyer clients.

A husband and wife broker team affiliated with Dawson's agency listed a property for sale. As part of the listing process, the sellers agreed to the appointment of the brokers as their appointed agents, and also agreed to disclosed dual agency.

Subsequently, one of the brokers entered into a buyer broker representation agreement with two buyers, who agreed to have the broker as their appointed agent. The buyers did not agree to disclosed dual agency. The buyers later became interested in the property that the two brokers had listed and for whom they were the appointed agents. Because the buyers did not agree to disclosed dual agency, they agreed to have their appointed agent changed to Dawson. However, Dawson did not provide the buyers with the proper written notice of the appointment or obtain their written consent to the appointment.

Dawson was found in violation of 32 M.R.S.A. § 13067(1)(F) and Chapter 330 Section 8(B) of the Maine Real Estate Commission Rules. He agreed to pay a fine of \$300.00.



On February 20, 2003 the members of the Commission accepted two consent agreements entered into by the Director and Larry G. Fogle and Samuel A. Mitchell, both of Belfast, Maine. Fogle and Mitchell are both brokers who were involved in the same transaction.

Fogle listed for sale with the agency a residential property that was owned by three sisters. They had inherited the property from their uncle, and none of them lived in Maine. Fogle was their appointed agent. The property was not occupied.

Mitchell was the appointed agent for a buyer who was interested in Fogle's listing. A purchase and agreement was entered into on July 1, 2002 and the sale was scheduled to close by August 16, 2002. The buyer wanted to access the property prior to the closing in order to get estimates for various restoration projects and wanted to put a dehumidifier in the basement. Without consulting with the sellers or obtaining their permission, Fogle agreed and gave the key to the property to Mitchell. Fogle did not ask about who would have the key, when it would be returned, or whether Mitchell would be present when the buyer was in the property. Mitchell gave the key to the buyer on July 3, 2002 and the buyer retained possession of the key until August 11, 2002.

The buyer put the dehumidifier in the basement. He also showed the property to people interested in buying it from the buyer after the closing. The buyer left notes on various items of personal property, asking

the sellers to leave the items after cleaning out the rest of the house. The buyer also arranged to sell a wood stove in the kitchen to another party, to be removed the day after the closing.

Mitchell learned that the buyer had been showing the property to other people. He confronted the buyer and told him that his actions were not appropriate. However, Mitchell did not request the return of the key.

The sellers arrived at the property on August 11, 2002 and discovered the notes on the items of personal property. While they were clearing the property, the neighbors told the sellers that the buyer had been at the property several times unaccompanied by a real estate agent. The buyer also arrived at the property to clean out the wood stove and he was not accompanied by an agent. The sellers informed Fogle of the situation. He immediately contacted Mitchell and had the key returned.

Subsequently, Fogle met with the sellers and their attorney, along with his designated broker. The sellers were released from their obligation to pay a commission to the agency. Fogle agreed to continue assisting the sellers through closing and attended the closing with them.

Fogle was found in violation of 32 M.R.S.A. §§ 13067(1)(G) and (H). He agreed to pay a fine of \$400.00. Mitchell was found in violation 32 M.R.S.A. § 13067(1)(H). He agreed to pay a fine of \$400.00.



On February 20, 2003 the members of the Commission ratified their decision reached after a hearing on January 23, 2003 involving Charles H. Pinkham, III of North Conway, New Hampshire. Pinkham is a designated broker who failed to complete 15 hours of approved continuing education prior to the expiration of his license.

As part of his license renewal application, Pinkham certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Pinkham completed 9 hours after expiration of his license.

Pinkham was found in violation of 32 M.R.S.A. §§ 13067(1)(A) and (F). He was ordered to pay a fine of \$500.00.



On February 20, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Alexander



J. Tuttle, Jr. of Kingfield, Maine. Tuttle is a sales agent who failed to disclose a criminal conviction within 10 days of the conviction.

Tuttle has been licensed as a sales agent since October 5, 2001. In December 2002 he notified the Director that had been convicted in June 2002 of disorderly conduct. He provided additional information which showed that Tuttle had been convicted on May 23, 2002.

Tuttle was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.



On March 20, 2003 the members of the Commission accepted a consent agreement entered into by the Director and April R. Audet of Windham, Maine. Audet is a sales agent who failed to disclose a criminal conviction.

Audet stated on her sales agent license application that she had not been convicted of a crime by any court. After the license was issued, the Director learned that Audet had been convicted in 1999 of theft of services. After being contacted by the Director, Audet submitted an amendment to the application disclosing the conviction.

Audet was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). She agreed to pay a fine of \$200.00.



On March 20, 2003 the members of the Commission ratified their decision reached after a hearing on February 20, 2003 involving Bradford J. Carter of Rockland, Maine. Carter is a designated broker who improperly released an earnest money deposit.

Carter was acting as designated broker for his own agency as well as for another agency located in Damariscotta. The other agency had buyer clients under contract to purchase property which was listed with an agency in Gardiner. The buyers were denied financing from the first lending institution at which they applied, and were in the process of applying at another bank. Meanwhile, the closing date referred to in the purchase and sale agreement was approaching. The buyers requested an extension from the sellers, but the sellers refused.

There was some dispute among the licensees involved in the transaction as to whether the listing agent notified the buyer agent that the sellers requested the earnest money deposit. The buyer agent stated that no notification was given, and when she did

not hear anything further from the listing agent, she approached Carter about returning the deposit to the buyers. The practice of the agency was to request signed release forms from the parties to failed contracts before releasing deposits. In this transaction, the buyer agent did not follow that procedure, but discussed the matter with Carter. He instructed the buyer agent to return the deposit to the buyers. He did not instruct her to follow the agency procedure of obtaining signed releases, nor did he instruct her to contact the listing agent to determine whether the sellers agreed to return the deposit to the buyers. The sellers did not agree to the return of the deposit, and felt that they were entitled to receive it.

Carter was found in violation of 32 M.R.S.A. § 13067(1)(H). He was ordered to pay a fine of \$1,000.00.



On March 20, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Jonathan B. Cota of Bangor, Maine. Cota is a broker who failed to notify the Director in a timely manner of a conviction.

On February 7, 2003 Cota notified the Director by phone and fax that he had been convicted on December 2, 2002 for disorderly conduct. He provided court records and an explanation of the circumstances surrounding the event. The notification was not made within 10 days of the conviction.

Cota was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.



On March 20, 2003 the members of the Commission accepted a consent agreement entered into by the Director and C. Daniel Pooler of Bangor, Maine. Pooler is a broker who failed to notify his client of pertinent information.

A broker licensed with the same agency as Pooler listed a property for sale. The seller of the property told the broker that there was a second mortgage on the home originating with financing for a backhoe. The seller told the broker that those second mortgage payments were in arrears and he needed to sell the property to pay off the debt. The broker told the seller that Pooler also would be working on the sale of the property.

At the expiration of the listing, Pooler again listed the property for the seller. He reviewed with the seller the disclosed dual

agency consent agreement, the federal lead paint disclosure form, and the property disclosure form prepared during the previous listing, but did not ask the seller to initial or date the documents. Shortly thereafter the seller notified Pooler that he would be working in another town and provided Pooler with a telephone number at which he could be contacted.

Pooler showed the property to a buyer who expressed interest in purchasing it. Pooler contacted the seller and was instructed to contact the person to whom the seller owed money for the backhoe to see if assumption of the second mortgage was acceptable. After doing so, Pooler prepared a written offer for the buyer, but the seller rejected it.

A second offer was received from another buyer. Pooler called the telephone number provided by the seller, but did not reach him. Pooler did not try to reach the seller at his local address. Instead, he called the owner of the backhoe to see if the second offer was acceptable in order to cover the amount owed by the seller. The backhoe owner told Pooler that he had paid liens on the property imposed by the city and that he now owned the property. Pooler confirmed with the city that the liens had been paid and that a deed would be issued to the backhoe owner. Pooler made no efforts to contact the seller.

A purchase and sale agreement was entered into by the second buyer and the backhoe owner. Shortly thereafter, Pooler was contacted by the original seller's attorney and was informed that the original seller still owned the property and that a new purchase and sale agreement would have to be executed. When notified, the buyer initially reconsidered purchasing the property, but eventually an agreement was reached and the sale closed.

Pooler was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (F), and (G), 13273(1), 13725, and Chapter 330 Sections 5 and 7 of the Maine Real Estate Commission Rules. He agreed to pay a fine of \$1,900.00.



On March 20, 2003 the members of the Commission ratified their decision reached after a hearing on February 20, 2003 involving Hollis C. Tedford III of New Harbor, Maine. Tedford is a broker who failed to complete the core course prior the expiration of his license.

As part of his license renewal applica-

tion, Tedford certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Tedford had not completed the required core course.

Tedford was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197. He was ordered to submit documentation showing his successful completion of the core course.



On April 17, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Bethany S. Angle of Scarborough, Maine. Angle is a broker who failed to complete the core course prior to renewal of her license.

As part of her license renewal application, Angle certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Angle completed 18 hours of continuing education prior to her license expiration date, but had not completed the core course.

Angle was found in violation of 32 M.R.S.A. §§ 13067(1)(F), 13197(1) and (3), and Chapter 370 Section 10 of the Maine Real Estate Commission Rules. She agreed to pay a fine of \$500.00, to submit documentation of her completion of the core course, and to submit documentation of completion of 15 hours of approved continuing education with her next license renewal application.



On April 17, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Christopher R. Drew of Caribou, Maine. Drew is a real estate broker who failed to notify the Commission of a criminal conviction in a timely manner.

On March 25, 2003 Drew notified the Commission of a Class D conviction on November 20, 2002. The notification was not made within 10 days of the conviction.

Drew was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.



On May 22, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Roger W. Ek of Lincoln, Maine. Ek is an associate broker who failed to properly obtain and provide property disclosure information.

Ek listed a property for sale that consisted of 24 acres of land on which had been located an operating mill. The remainder of the mill was to be removed. Ek completed a property

disclosure form designed for use on land only sales. It included information about underground storage tanks and other hazardous materials, and general information about liens and encroachments.

At some point, Ek learned that the property at one time included a mobile home on a slab which was served by a private water supply and a private waste disposal system. Ek amended the "land only" disclosure form to answer affirmatively three questions on the form about whether the property had ever had a structure on it such as a house, if the property was served by a private water supply, and if the property was served by a private waste disposal system. The form included a preprinted statement that if any of the answers to the three questions was yes, then another three page property disclosure form must be completed. Ek did not complete the three page form.

A buyer was found for the property and a purchase and sale agreement was entered into by the buyer and the seller. The buyer lived in Philadelphia and had physical limitations. The buyer did not view the property and did not have anybody view it for him. Prior to the closing, Ek provided information to the buyer about a tank that had been discovered during the course of removing the remnants of the mill. Ek looked inside and discovered what he characterized as a full cesspool. He also discovered that the pipe leading from the tank to the location of the previous mobile home was crushed. Ek told the buyer what he found but did not provide any information about cesspools. He told the buyer that he did not know if there was a leachfield, but he did not suggest that the buyer have somebody inspect the cesspool. Ek also agreed to arrange to have the crushed pipe replaced.

The buyer intended to have a mobile home moved to the property and installed prior to the closing. He also wanted to move into the mobile home before the closing. The seller agreed to both requests, and also agreed to allow the buyer to have a well drilled. Ek did not suggest to the seller that written agreements about the improvements and the early occupancy should be considered, or that the seller might wish to consult an attorney about the matter.

After the closing, the buyer arranged to have what he thought was the septic tank pumped. He was informed that there was no tank, that what had been used as a septic tank appeared to be some sort of poured concrete well. The pipe that had been replaced was not

done in compliance with current codes. The buyer was notified that he would need a new septic system.

Ek was found in violation of 32 M.R.S.A. § 13067(1)(F) and (G), and Chapter 330 Sections 16 and 18 of the Maine Real Estate Commission Rules. He agreed to pay \$3,500.00 to the buyer.



On May 22, 2003 the members of the Commission ratified their decision reached after a hearing on April 17, 2003 involving Katherine M. Gerry of Lebanon, Maine. Gerry is an associate broker who failed to comply with the terms of an executed consent agreement.

On January 23, 2003 Gerry entered into a consent agreement in which she agreed to pay a fine of \$600.00 by January 31, 2003. Before the due date of the fine, Gerry contacted the Director inquiring about more time to make the payment. The Director informed Gerry that she needed to write to the Commission with the request. Nothing was received from Gerry. Subsequently, Gerry's designated broker informed the Commission that Gerry was no longer affiliated with his agency.

Gerry was found in violation of 32 M.R.S.A. § 13067(1)(M). Gerry's associate broker license was ordered suspended until such time as she complies with the terms of the January 23, 2003 consent agreement and pays an additional fine of \$400.00.



On May 22, 2003 the members of the Commission ratified their decision reached after a hearing on March 20, 2003 and public deliberations on April 17, 2003, involving Michael A. Lessard of Mount Desert, Maine. Lessard is a sales agent who failed to disclose a criminal conviction.

Lessard stated on his sales agent license application that he had not been convicted of a crime by any court. After the license was issued, the Director learned that Lessard had been convicted in 1978 of criminal trespass.

Lessard was found in violation of 32 M.R.S.A. § 13191(1). He was ordered to pay a fine of \$100.00.



On July 17, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Ellen Devine of Bangor, Maine. Devine is an associate broker who failed to notify the Director of a conviction within 10 days.

On May 16, 2003 Devine submitted her license renewal application and disclosed that

she had been convicted on November 30, 2001 of a Class D offense of operating under the influence.

Devine was found in violation of 32 M.R.S.A. § 13195. She agreed to pay a fine of \$200.00.



On July 17, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Rebecca L. Doughty of Brunswick, Maine. Doughty is a broker who failed to complete 15 hours of approved continuing education prior to the expiration of her license.

As part of her license renewal application, Doughty certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Doughty completed only 9 hours of continuing education prior to her license expiration date.

Doughty was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). She agreed to pay a fine of \$500.00 and to submit documentation of completion of 15 hours of approved continuing education with her next license renewal application.



On July 17, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Robert J. Magda of North Vassalboro, Maine. Magda is a designated broker who failed to protect and promote the interests of his principal.

Magda represented the seller of property. The seller received an offer from buyers which included a contingency that the buyers' sell their property. The parties reached a final agreement that included a clause allowing the seller to give the buyers 72 hours notice to remove the contingency if another acceptable offer was received.

Subsequently, the seller received another offer from different buyers. The seller accepted the offer in writing, without Magda advising them to include some reference to the second contract being contingent upon the first contract not closing.

The first buyers were notified of the second offer, and they removed the contingency from their contract requiring them to sell their property. When the second buyers were notified, they consulted their attorney about civil action.

Magda was found in violation of 32 M.R.S.A. § 13067(1)(G). He agreed to pay a fine of \$500.00.



On July 17, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Joel T. Micciche of Ellsworth, Maine. Micciche is a sales agent who failed to disclose a criminal conviction. Micciche stated on his sales agent license application that he had not been convicted of a crime by any court. After the license was issued, the Director learned that Micciche had been convicted in 1997 of reckless conduct. After being contacted by the Director, Micciche submitted an amendment to the application disclosing the conviction.

Micciche was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$200.00.



On July 17, 2003 the members of the Commission accepted a consent agreement entered into by the Director and Betty Wolters of Dover, New Hampshire. Wolters is a broker who failed to collect and deposit earnest money.

Wolters prepared an offer for her buyer client to purchase property. The offer stated that it included an earnest money deposit of \$7,000.00. The parties negotiated some changes and the final agreement was effective March 21, 2002. At some point after that date, Wolters noticed that the check provided by the buyer for the earnest money deposit was payable to the title company instead of the agency. Wolters made attempts to get a replacement check from the buyer but the buyer failed to produce a properly written check. Wolters did not notify the listing agent that the earnest money deposit had not been received.

After the inspections were completed, the buyer decided not to proceed with the purchase. The seller disputed the return of the deposit to the buyer based upon a question about whether the inspections were done during the specified time period. On April 23, 2002 Wolters deposited \$7,000.00 of her own money into the agency trust account to cover the deposit amount that was not paid by the buyer. The parties eventually settled the dispute and the seller agreed to accept half of the deposit amount.

Wolters was found in violation of 32 M.R.S.A. §§ 13067(1)(D) and (F), and Chapter 320 Section 3(C) of the Maine Real Estate Commission Rules. She agreed to pay a fine of \$200.00.



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Public Seat



*Maine Real Estate News is a semi-annual publication published under appropriation 014 02A 4060. This is a dedicated revenue account consisting of funds collected from licensing.*



## Making Commission Payments to Individual Corporations

*Karen L. Bivins, Deputy Director*

In the past several years, licensees have formed individual corporations in order to take advantage of tax benefits, and have asked to have their commission payments made directly to the corporations. The Commission does not have a formal position on this issue. The practice is prohibited in some states. On the occasions when the Commission is asked about such corporations and the payment of commissions, it has been the Commission's policy to first state that we realize the intent of forming the corporation is not to circumvent the licensing statute. However, there are two issues of concern that must be considered.

First, in light of the statute, is the agency paying a commission to an unlicensed entity, namely the corporation, for brokerage activities? Since the corporation did not conduct the brokerage activity, a commission is not being paid for those services. The second issue is whether the unlicensed corporation is paying a commission to a licensee. Technically, it is and such payment is a violation of the licensing statute, because all commission payments are to be paid by the designated broker to the licensee.

To address these issues, the designated broker should have a written agreement with the licensee holding the corporation stating that commission payments will be paid to the corporation for tax purposes only and not as an attempt to circumvent the licensing law. The written agreement should be kept on file at the agency office for future reference should any question arise.

It should be noted that the Commission's opinion applies only to corporations formed solely for tax purposes, and does not apply to other business corporations that might be formed by a licensee. ***The designated broker is responsible for ensuring what type of corporation is receiving the commission payment.***

## FIND A LICENSEE ONLINE at [www.maineprofessionalreg.org](http://www.maineprofessionalreg.org)

### ***Check the status of a license online***

Use **FIND A LICENSEE** to look-up a licensee of any of the regulatory boards and commissions under the Office of Licensing & Registration's umbrella, including the Real Estate Commission. Information displayed includes status of license, expire date and agency affiliation, if applicable. Agency records also include the designated broker and a list of all currently affiliated licensees.

### ***Reduce the number of calls you make to the Real Estate Commission!!!***

**FIND A LICENSEE** is particularly useful in checking on whether a new sales agent or associate broker license has been issued, whether a license has been renewed or whether a change of agency or status has been processed.

To look-up a licensee, go to the web address above and click on **FIND A LICENSEE**. Choose the licensing board you want and type in name, license number or social security number.

In addition, license applications, change of license forms and course schedules may be downloaded from the Commission's home page. To get to our homepage, go to the web address above, click on **View List of Licensed Professions** then click on **"Real Estate Brokers"** to go to the Commission's home page. Scroll down the page and click on **Applications, Forms & Publications**. Just choose the document you need and print!

**REMEMBER TO KEEP YOUR  
CONTINUING EDUCATION  
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